

1

James Demas March 13, 2014

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

HEALTHY ADVICE NETWORKS, LLC.)
)
 Plaintiff,)
)
 vs.) Case No.
) 1:12-cv-00610
CONTEXTMEDIA, INC.,)
)
 Defendant.)

The deposition of JAMES DEMAS, called by the Plaintiff for examination, taken pursuant to notice, agreement, and by the provisions of the Federal Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Tina M. Alfaro, CSR No. 084-004220, a Notary Public within and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter of said State, at the offices of Vedder Price, 222 North LaSalle Street, Chicago, Illinois, on the 13th day of March, A.D., 2014 at 9:00 a.m.

Merrill Corporation - Chicago

(312) 386-2000

www.merrillcorp.com/law

James Demas March 13, 2014

1 APPEARANCES:

2 FROST BROWN TODD, LLC
3 BY: GRANT COWAN, ESQ.
4 330 Great American Tower
5 301 East Fourth Street
6 Cincinnati, Ohio 45202
7 (513) 651-6900
8 gcowan@fbtlaw.com

9 On behalf of the Plaintiff;

10 SIDLEY AUSTIN, LLP
11 BY: RICHARD O'BRIEN, ESQ.
12 One South Dearborn Street
13 Chicago, Illinois 60603
14 (312) 853-7000
15 robrien@sidley.com

16 On behalf of the Defendant.

17
18
19
20
21
22
23
24 REPORTED BY: Tina Alfaro, CSR No. 084-004220

James Demas March 13, 2014

1	I N D E X	
2		
3	EXAMINATION	
4	WITNESS	PAGE
5	JAMES DEMAS	
6	By Mr. Cowan	5
7	EXHIBITS	
8	PLAINTIFF'S EXHIBITS	PAGE
9	Exhibit 137	12
10	Financial records	
11	Exhibit 138	17
12	Quarterly income statements	
13	Exhibit 139	17
14	Independent Contractor Agreement for	
15	Direct Seller	
16	Exhibit 140	19
17	Redacted offer letter	
18	Exhibit 141	20
19	7/11/11 offer letter	
20	Exhibit 142	20
21	1/2/12 offer letter	
22	Exhibit 143	21
23	7/3/12 offer letter	
24	Exhibit 144	21
	2/6/14 offer letter	
	Exhibit 145	34
	E-mail	
	Exhibit 146	43
	2/9/11 e-mail string	

James Demas March 13, 2014

1	EXHIBITS	
2	(Cont'd)	
3	PLAINTIFF'S EXHIBITS	PAGE
4	Exhibit 147	43
5	3/2/11 e-mail	
6	Exhibit 148	45
7	3/4/11 e-mail	
8	Exhibit 149	47
9	E-mail	
10	Exhibit 150	52
11	E-mail	
12	Exhibit 151	56
13	10/18/11 e-mail	
14	Exhibit 152	60
15	Series of e-mail	
16	Exhibit 153	62
17	10/23/12 e-mail	
18	Exhibit 154	63
19	Quarterly billing	
20		
21		
22		
23		
24		

James Demas March 13, 2014

1 (Witness sworn.)

2 WHEREUPON:

3 JAMES DEMAS,
4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. COWAN:

8 Q. Good morning. State your name.

9 A. James Demas.

10 Q. Mr. Demas, my name's Grant Cowan. We met
11 several times. I'm here to take your deposition in
12 the case that PatientPoint has brought against
13 Contextmedia that's pending in the Federal Court in
14 Cincinnati.

15 Have you ever had a deposition taken
16 before?

17 A. I have.

18 Q. And how long was that?

19 A. Approximately 15 years ago.

20 Q. I suspect that the ground rules are
21 probably pretty similar to what they were back 15
22 years ago, but I'll go ahead and cover some basic
23 ground rules.

24 The first is if I ask you a question at any

James Demas March 13, 2014

1 time that you don't understand or is any way
2 confusing to you, let me know and I'll rephrase the
3 question. It's my job to put a question to you that
4 you understand.

5 Second is I'll ask you to answer the
6 questions orally, yes or no, explain your answer,
7 but I'm sort of distinguishing that between an
8 uh-huh or a nod of the head because Tina will have
9 difficulty reflecting that on the transcript.

10 Then the final rule is while I don't expect
11 this to be going all day, we'll probably go at least
12 several hours. We've been pretty good about taking
13 breaks about every hour, but if at any time you need
14 a break, just let me know and what I'll do is I'll
15 kind of try to work myself quickly to a convenient
16 stopping point. Okay?

17 A. Okay.

18 Q. You're currently the CFO for Contextmedia?

19 A. I am.

20 Q. Do you hold any other title?

21 A. I do not.

22 Q. And when did you join the company?

23 A. I joined the company in August of 2009.

24 Q. And when you joined the company in August

James Demas March 13, 2014

1 of 2009, was it as the CFO?

2 A. I was hired as controller.

3 Q. Was there a CFO at the time?

4 A. There was not.

5 Q. When did you become CFO?

6 A. I don't remember the exact date, but it was
7 sometime in 2010.

8 Q. Do you know if it was in the first half of
9 2010?

10 A. I don't recall.

11 Q. What were your duties -- let me ask you
12 this. Did you assume any additional duties as CFO
13 that you did not have as controller?

14 A. Not necessarily as CFO, but during -- I
15 don't recall the time frame that I adopted more
16 responsibility, but certainly I picked up more
17 responsibility as I -- as my tenure increased at
18 Contextmedia.

19 Q. As of year-end 2010, describe for me
20 generally as best you can your duties and
21 responsibilities as CFO.

22 A. I was in charge of the accounting, finance
23 function in the company. I also had the member
24 services or account services team reporting to me

James Demas March 13, 2014

1 and, to my recollection, the logistics function as
2 well.

3 Q. And did you report directly to Mr. Shah?

4 A. I did.

5 Q. And member services, your direct report or
6 the person that would have reported directly to you
7 at that time would have been Ms. Velazquez?

8 A. Ms. Velazquez. I believe at the end of
9 2010 we may have -- strike that. We hired somebody
10 in 2011. So yes, Ms. Velazquez.

11 Q. And who was it that was hired for MSE in
12 2011?

13 A. Chad Patterson.

14 Q. And then logistics would have been Coppola?

15 A. Correct.

16 Q. Matt Coppola?

17 A. Correct.

18 Q. How would you describe the financial
19 condition of the company, Context, say in the second
20 half of 2010?

21 A. What do you mean by "describe"?

22 Q. Fair enough. Was the company facing any
23 financial issues that you considered to be outside
24 the norm, any financial concerns or constraints in

1

Age Group	Percentage
18-24	10
25-34	15
35-44	20
45-54	25
55-64	30
65-74	35
75-84	40
85-94	45
95-104	50

[illegible]

James Demas March 13, 2014

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

[REDACTED]

7

[REDACTED]

8

[REDACTED]

9

[REDACTED]

10

A. I was.

11

Q. And in what capacity? How so?

12

A. Primarily from a financial standpoint

13

assuring that we had the resources to roll out a new

14

network.

15

Q. And what's your understanding of how it is

16

that RHN came about? Why did the company decide to

17

roll out a new network?

18

A. Since my joining we had talked about moving

19

into additional verticals and we had always

20

identified 11 or 13 different verticals that were

21

attractive to us, and we just felt this was a good

22

time for us. I believe there were some

23

conversations with agencies who were interested in

24

potentially looking for a new outlet for a

James Demas March 13, 2014

1 rheumatoid network. I believe the impetus was more
2 we were ready to move away from -- in addition to
3 diabetes, move into another vertical.

4 Q. And the agencies you talked to, would one
5 of them have been J3?

6 A. We talked to J3. I don't know if it was
7 prior to our discussions about launching the
8 network.

9 Q. And the discussions with J3 would have been
10 relevant to Simponi?

11 A. Correct.

12 Q. Any other agencies that you talked to prior
13 to the formation of RHN about RHN?

14 A. Not that I'm aware of, but I don't
15 frequently talk to agencies other than when I'm
16 trying to collect money.

17 Q. Okay.

18 who negotiates the contractual terms
19 between Context and an agency or Context and a
20 sponsor?

21 A. Today?

22 Q. Yes.

23 A. Today it's our sponsorship team, the head
24 of our sponsorship team.

James Demas March 13, 2014

1 Q. And who's the head of the sponsorship team?
2 Is that Ms. Agarwal?

3 A. Ashik, A-S-H-I-K, Desai, D-E-S-A-I.

4 Q. In 2010 and 2011 who negotiated the terms
5 of specific agreements?

6 A. Rishi Shah.

7 Q. Did you have any involvement in that
8 process?

9 A. Not in the negotiations themselves other
10 than providing information to Mr. Shah.

11 Q. Okay.

12 Were you personally involved in any
13 discussions with J3 relative to the formation of
14 RHN, specifically discussions about Simponi and the
15 development of a rheumatology network.

16 A. No, I was not.

17 (Plaintiff's Exhibit 137 was
18 marked as requested.)

19 BY MR. COWAN:

20 Q. Mr. Demas, I've handed you what we've
21 marked as Deposition Exhibit 137, and these are some
22 materials that were produced to us by Context.
23 You'll see that they have numbers down at the
24 bottom. They appear to be some profit and loss

James Demas March 13, 2014

1 and/or statement of operations. They're a little
2 bit out of order in terms of Bates numbering. I
3 just put them by year order. Can you identify these
4 for me?

5 A. Yes. These are our internal financial
6 statements, and they are all statements of
7 operations for year-end starting 2006 through 2012.

8 Q. And are you involved in the preparation of
9 these?

10 A. I am.

11 Q. At least as is reflected in these
12 documents, Exhibit 137, it appears as if
13 Contextmedia lost money every year from its
14 inception through 2010; is that fair?

15 A. Excuse me. Can I go back to your previous
16 question?

17 Q. Sure.

18 A. You asked if I was involved in the
19 preparation of these. I was involved in the
20 preparation from 2009 on. I was not there prior to
21 2009.

22 Q. Fair enough.

23 A. Just for clarification.

24 Q. Yep.

1

Age Group	Percentage
18-24	10%
25-34	15%
35-44	20%
45-54	25%
55-64	30%
65-74	35%
75-84	40%
85+	45%

The image is entirely black and contains no visible content.

James Demas March 13, 2014

[illegible][illegible]

James Demas March 13, 2014

1

■

■

■

■

■

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

Q. Does Context consider provider recruitment to be marketing?

A. Provider recruitment?

Q. Yes.

A. Office acquisition, is that what you're asking? Member recruitment?

Q. I probably ought to ask my colleague here. Yes.

A. To be marketing?

Q. Yes.

A. Portions of what they do are marketing.

Q. Okay. What portions?

A. So we have a direct marketing function within that group that we call member outreach.

Q. Is that what was Jeana Loewe's group?

A. That's correct.

Q. And that's a marketing -- that's a brand mark- -- is that a brand marketing function?

James Demas March 13, 2014

1 A. Correct.

2 Q. And that was within member outreach?

3 A. It was categorized for financial statements
4 as a separate department.

5 Q. Okay.

6 A. But that function supported the member
7 outreach team.

8 (Plaintiff's Exhibit 138 was
9 marked as requested.)

10 BY MR. COWAN:

11 Q. I've handed you what we've marked as
12 Exhibit 138. Can you identify this, Mr. Demas?

13 A. Yes. This is our quarterly income
14 statements for the years ended 2009 through 2013.

15 (Plaintiff's Exhibit 139 was
16 marked as requested.)

17 BY MR. COWAN:

18 Q. Handing you what we've marked as 139. It's
19 labeled "Independent Contractor Agreement for Direct
20 seller," and it looks as if the last page of this
21 has your name and signature; is that right?

22 A. Yes, that is my signature and my name.

23 Q. And this is the independent contractor
24 agreement between Context and Acquirent; is that

James Demas March 13, 2014

1 correct?

2 A. Correct.

3 Q. According to the first page, the initial
4 term was from October 18, 2010 ending on or about
5 April 30, 2010; do you see that?

6 A. Yes.

7 Q. Do you know if this agreement was extended?

8 A. I don't recall.

9 Q. At least during the initial term of the
10 independent contractor agreement, was there a
11 particular individual within Context that was sort
12 of the primary liaison with Acquirent?

13 A. Jeana Loewe.

14 Q. The first page, again, it's about halfway
15 down, Mr. Demas, it says "Acquirent agrees to market
16 and sell Contextmedia, Inc.'s patient education
17 services to target customers and verticals agreed
18 upon with Contextmedia."

19 Did, at least during this time frame,
20 Context have targeted customers?

21 A. I don't know specifics about targeted
22 customers. That would have been Jeana Loewe's
23 category.

24 Q. And at least as the term "customer" is used

James Demas March 13, 2014

1 there, do you understand that to be members?

2 A. I do, yes.

3 Q. And members being, as we've used it in
4 other depositions, physician practices, correct?

5 A. Correct.

6 Q. Context has produced some what appear to be
7 offer letters between -- sample, template offer
8 letters between Context and member outreach
9 executives. Are these documents you'd be familiar
10 with generally?

11 A. Yes.

12 (Plaintiff's Exhibit 140 was
13 marked as requested.)

14 BY MR. COWAN:

15 Q. Does this appear to be essentially a
16 sample -- why don't you tell me what this is,
17 Exhibit 140.

18 A. It's a redacted offer letter to a member
19 outreach executive.

20 Q. And under the compensation paragraph, items
21 1 and 2, is that, to the best of your knowledge,
22 part of the compensation structure, at least as of
23 August 27, 2010 for MOEs?

24 A. Are you referring to 1 and 2?

James Demas March 13, 2014

1 Q. Yes. Roman 1 and 2.

2 A. It is. It's part of the -- it's the earned
3 commission structure.

4 (Plaintiff's Exhibit 141 was
5 marked as requested.)

6 BY MR. COWAN:

7 Q. I'm just going to go through a series of
8 these and sort of ask the same questions. So 141
9 would be the same type of document, although this is
10 for at least as of July 11, 2011; is that right?

11 A. Yes.

12 (Plaintiff's Exhibit 142 was
13 marked as requested.)

14 BY MR. COWAN:

15 Q. Mr. Demas, Exhibit 142 appears to be a
16 similar document, this time for the period at least
17 as of January 2, 2012?

18 A. This document is different.

19 Q. Ah, okay. What is this? This appears to
20 be for an account director?

21 A. That is correct.

22 Q. And what's an account director?

23 A. An account director is a salesperson on the
24 sponsorship side of our business.

James Demas March 13, 2014

1 Q. So would that be like a Matt Crandall or a
2 Steve Svec?

3 A. Yes.

4 (Plaintiff's Exhibit 143 was
5 marked as requested.)

6 BY MR. COWAN:

7 Q. 143 appears to be an offer letter for a
8 member outreach executive position as of July 3,
9 2012?

10 A. It is.

11 (Plaintiff's Exhibit 144 was
12 marked as requested.)

13 BY MR. COWAN:

14 Q. 144 appears to be an offer letter for a
15 member outreach executive position as of February 6,
16 2014?

17 A. It is.

18 Q. Let me talk about the latter part of 2010.
19 Do you know if prior to, say, December 2010 Context
20 had switched out any practices that were at the time
21 using a competitor service?

22 A. Prior to the last half of 2010?

23 Q. Exactly.

24 A. I don't know of any.

James Demas March 13, 2014

1 Q. You were involved in some internal
2 discussions at Context about the idea of doing
3 competitor switch-outs?

4 A. Yes.

5 Q. And how did that come about?

6 A. Mr. Shah suggested it.

7 Q. Tell me as best you can recall -- my first
8 question is do you recall about when that occurred?

9 A. The latter half 2010.

10 Q. And tell me as best you can recall what
11 Mr. Shah suggested.

12 A. He suggested that we compete against
13 competitor services by selling against them
14 directly.

15 Q. And was there -- did he indicate to you if
16 there was some sort of a precipitating factor for
17 that decision?

18 A. No.

19 Q. Prior to that time with respect to the DHN,
20 the Diabetes Health Network, if Context encountered
21 a member that had a competitor, did it not attempt
22 to switch the practice?

23 A. I don't know the answer.

24 Q. Who was involved in the initial discussions

James Demas March 13, 2014

1 within Context about the idea of developing a
2 competitor switch-out practice?

3 A. The members of the senior management team.

4 Q. Which would be you, Mr. Shah, and
5 Ms. Agarwal?

6 A. Correct.

7 Q. Anyone else?

8 A. Not that I recall.

9 Q. As of the latter half of 2010, to your
10 knowledge, was Context able to identify practices
11 that had competitor systems in them at the time?

12 A. Identify in what way?

13 Q. Well, let me -- I'll ask you some specific
14 questions. Do you know if Context ever was either
15 provided or developed a list of potential member
16 sites which list would indicate whether the member
17 currently had a point-of-care service?

18 A. No, we do not have such a list.

19 Q. To your knowledge, how did Context go about
20 marketing its services to members in the
21 rheumatology field? Specifically what I'm trying to
22 get at is was there some sort of a list of practices
23 that the member outreach team had?

24 A. To the best of my knowledge, there were

James Demas March 13, 2014

1 lists that were purchased, and they worked off those
2 lists to target physicians.

3 Q. Do you recall discussions in the second
4 half of 2010 in connection with the development or
5 the formation of RHN that Healthy Advice had a
6 presence in that market, a pre-existing presence in
7 that market?

8 A. I'm sorry. Can you repeat the question?

9 Q. Sure.

10 Do you recall discussions internal to
11 Context in, say, the second half of 2010 relative to
12 the formation of the RHN about the fact that Healthy
13 Advice had sort of a pre-existing presence in the
14 network or those offices?

15 A. Yes.

16 Q. Tell me what -- tell me what you learned
17 and who from.

18 A. Just in normal discussions of competitors
19 in our space, I think we knew that even before the
20 latter half of 2010. There's not many players in
21 this field. So we often monitor our competitors.

22 Q. In terms of Mr. Shah approaching the senior
23 management team and talking about the idea of
24 competing, going against competitors in point-of-

James Demas March 13, 2014

1 care, I'm trying to understand how Context would
2 know that they were going to be competing if they
3 didn't have some idea of which practices had which
4 competitors?

5 A. As we called into offices we encountered
6 competitors, and it was as we were building out the
7 RHN and encountering competitors that we learned
8 that there were offices that had Healthy Advice and
9 AccentHealth.

10 Q. And as that began to occur, as Context
11 began to call into offices and learn that some of
12 the offices at least had competitors in there
13 including Healthy Advice, do you know if any of the
14 members raised any concerns or issues about how
15 there would be a switch if they already had a system
16 in place?

17 A. I don't know if they raised concerns.

18 Q. Are you familiar with the term as used by
19 Context called a competitor switch-out package or a
20 hassle-free switch-out package?

21 A. Yes.

22 Q. And how did you become aware of that?

23 A. I was involved in drafting up the document.

24 Q. That's the authorization form?

James Demas March 13, 2014

1 A. The authorization form, yes.

2 Q. In terms of some of the ancillary materials
3 relative to the switch-out package, did you have any
4 involvement in drafting any ancillary materials?

5 A. What are the ancillary materials you're
6 referring to?

7 Q. Well, I showed them to Mr. Shah yesterday
8 and I can pull them out, but there's some documents
9 that were used by some of the MOEs, a one-page
10 switch that says "Switching is easy" and it talks
11 about how to go about switching.

12 A. No, I wasn't involved in preparing any of
13 those.

14 Q. Other than the written authorization form,
15 do you recall having any involvement in the
16 preparation of any other written documents relative
17 to the switch-out package?

18 A. No.

19 Q. How does the development of the
20 authorization form come about? Why was that done?

21 A. It was my suggestion. I wanted to make
22 sure that we had the authorization of the office
23 before we took something down that was on their
24 property.

James Demas March 13, 2014

1 Q. Was that -- did that come about because
2 someone had -- someone within Context had raised the
3 issue with you?

4 A. Raised the issue that --

5 Q. Of taking down a competitor's equipment.

6 A. Rishi Shah raised the issue of wanting to
7 go in and switch out, and my part in it was to
8 develop the authorization form. It was my idea to
9 do that. Does that answer your question?

10 Q. Yeah, it does.

11 So when Mr. Shah talked about wanting to go
12 in and switch out competitors, did switch-out, as
13 you use that term, include removing the competitor
14 equipment that was existing in the member office?

15 A. Yes.

16 Q. And why was it necessary for -- at least as
17 you understood it, why was it necessary for Context
18 to do that?

19 A. To remove the equipment?

20 Q. Yes.

21 A. I don't recall why it was necessary.

22 Q. All right.

23 We've got some binders here of some
24 previously marked exhibits, and I'm going to ask you

James Demas March 13, 2014

1 to look at a series of them that start at 71. Take
2 a minute and look at Exhibit 71. Just review it to
3 yourself as much as you need to to familiarize
4 yourself with it.

5 (Witness viewing document.)

6 BY THE WITNESS:

7 A. Okay.

8 Q. Does this e-mail string sort of generally
9 describe, at least as of December 2, 2010, sort of
10 the genesis of the idea to create a written
11 authorization form?

12 A. Yes.

13 Q. I'm going to ask a question, but don't
14 answer it right away. I want to give Dick the
15 opportunity to tell you not to.

16 The written authorization form that you
17 prepared, did you provide that to legal counsel
18 before it was actually provided to potential
19 members?

20 MR. O'BRIEN: You can answer that with a yes or
21 no.

22 BY THE WITNESS:

23 A. No.

24 Q. Okay. Exhibit 72 is an e-mail from you to

James Demas March 13, 2014

1 Mr. Shah and Ms. Agarwal. The subject is "Install
2 authorization" and there's an attachment. Is this
3 at least the draft installation authorization
4 document?

5 A. It is.

6 Q. And in your e-mail you say "Hey guys. I've
7 written this to appear as an installation/
8 de-installation authorization." What did you mean
9 by "appear"?

10 A. I don't know what I meant at the time.

11 Q. At the time that you prepared the written
12 authorization form, had you seen a copy of any of
13 Healthy Advice's contracts or agreements with member
14 practices?

15 A. Not that I recall.

16 Q. Take a look at Exhibit 74, and this is an
17 e-mail from Ms. Velazquez to you and a bunch of
18 others dated January 6, 2011 and the subject is
19 "Copy of a Healthy Advice agreement." She says "Hi
20 team. Attached is a copy of the Healthy Advice
21 agreement for everyone's review," and then there's
22 an agreement attached. Do you see that?

23 A. Yes.

24 Q. Do you recall at some point in time on or

James Demas March 13, 2014

1 around this date seeing a copy of the Healthy Advice
2 agreement?

3 A. I don't recall it at the time.

4 Q. The e-mail would indicate as much?

5 A. Yes.

6 Q. Then if you'd look at the actual -- stay
7 with 74, the actual enrollment agreement, the
8 Healthy Advice agreement. Mr. Demas, I've had
9 trouble directing witnesses to the language, but
10 about a third of the way up from the bottom there's
11 some language that says "HAN offers the practice the
12 system under the terms set forth in this agreement";
13 do you see that?

14 A. Yes.

15 Q. It says "All system equipment and content
16 shall remain the property of HAN or its licensors";
17 do you see that?

18 A. Yes.

19 Q. And it says "The initial term in this
20 agreement is 24 months from the last date set forth
21 below and will automatically renew for 12-month
22 periods after the initial term"; do you see that?

23 A. Yes.

24 Q. It goes on to say "Either party may cancel

James Demas March 13, 2014

1 the agreement at any time after six months with a
2 30-day written notice to the other"; do you see
3 that?

4 A. Yes.

5 Q. And a little bit further on it says "By
6 signing below the practice further agrees it will"
7 and item B says "Not remove, relocate, modify,
8 alter, or disrupt the system, e.g., maintain agreed
9 to volume and video settings, not turn off or unplug
10 the system, et cetera, without HAN prior written
11 agreement"; do you see that?

12 A. Yes.

13 Q. After seeing the HAN agreement, did you
14 have any concerns about, going forward, Context
15 providing a document to member practices which
16 purported to have the member practice authorize
17 Context, a competitor of HAN, remove HAN equipment?

18 A. The form was designed to alleviate those
19 concerns. To receive the authorization is precisely
20 why we did a form and have the office authorize us
21 to do so.

22 Q. What basis did you have for believing that
23 Context could essentially have a practice authorize
24 it to -- authorize ConContext to remove a

James Demas March 13, 2014

1 competitor's equipment, particularly given the
2 language in the HAN agreement?

3 A. The authorization form was instructing us
4 to remove the equipment on behalf of the member.
5 It's their office. We believe they can choose the
6 service that they want. As part of that we
7 facilitated the process by obtaining an
8 authorization form and removing the equipment.

9 Q. Do you know of any member practices ever
10 raising any questions about the authorization form?

11 A. I don't recall any specifically.

12 Q. Take a look, if you would, at Exhibit 76.
13 I think this has been previously identified, but
14 does this appear to be a Contextmedia RHN sign-up
15 sheet and agreement?

16 A. This is.

17 Q. And it's dated -- it appears as if it's
18 dated February 14 of 2011. Does that look right to
19 you?

20 A. I'm not seeing the date.

21 Q. Down at the very bottom.

22 A. There we go. Yes.

23 Q. And you'll see the last sort of item under
24 the agreement is a provision that's checked that

James Demas March 13, 2014

1 says "I will insure that the RHN will be the only
2 electronic media in this waiting room, and I commit
3 to playing the RHN during all office hours." Do you
4 see that?

5 A. Yes.

6 Q. And then if you turn to the next exhibit,
7 Exhibit 77, this is an e-mail from Jeana Loewe to
8 Mr. Vandersteen with some RHN materials?

9 A. Yes.

10 Q. And if you look at the form -- RHN sign-up
11 form and agreement, you'll see that right above the
12 signature line now there's a space added to the
13 Context form that says "I agree to not remove,
14 relocate, modify, alter, disrupt any of the RHN
15 system components without prior consent from the
16 Rheumatoid Health Network"; do you see that?

17 A. Yes.

18 Q. Do you know how it came to be that Context
19 apparently revised its agreement to include that
20 language?

21 A. I don't know how it came to be.

22 Q. Were you aware that Context had added that
23 language?

24 A. I was aware.

James Demas March 13, 2014

1 Q. How did you become aware of that?

2 A. Reading this sign-up form.

3 Q. And did you believe that it was important
4 to have Context members agree that they would not
5 remove, relocate, modify, alter, or disrupt any of
6 the RHN system components without prior written
7 consent?

8 A. Yes.

9 Q. And was it your expectation that members
10 would, if they signed that, abide by that provision?

11 A. Yes.

12 Q. Do you know who it is within Context that
13 prepares the member agreements?

14 A. Today?

15 Q. No. Back in, say, 2010, 2011.

16 A. Jeana Loewe.

17 (Plaintiff's Exhibit 145 was
18 marked as requested.)

19 BY MR. COWAN:

20 Q. Handing you what we've marked, Mr. Demas,
21 as Exhibit 145. It's an e-mail from you to
22 Ms. Velazquez. The subject is "Back side of HAN
23 contract." You can read it to yourself, but
24 essentially you were asking for the back side of one

James Demas March 13, 2014

1 of the HAN agreements?

2 A. Yes.

3 Q. Do you recall if you ever got it?

4 A. I don't recall.

5 Q. Why was it that -- if you can recall, why
6 was it that you wanted to see the back side of the
7 agreement?

8 A. I don't recall.

9 MR. COWAN: I'm going to shift topics. Do you
10 want to keep going or are you guys good?

11 COURT REPORTER: Can we take a quick bathroom
12 break?

13 MR. COWAN: You can sure. Let's take about
14 five.

15 (A short break was had.)

16 BY MR. COWAN:

17 Q. Mr. Demas, were you aware that in
18 connection with either the first HAN de-install or
19 one of the first HAN de-installs in the December
20 2010 time frame that a HAN player was shipped from
21 the practice to Context offices?

22 A. Yes.

23 Q. When did you learn that that had happened?

24 Let me try to frame it. Did you know before the HAN

James Demas March 13, 2014

1 player arrived that it was going to be coming back
2 to Context offices?

3 A. Yes.

4 Q. And how is that? How did you know that?

5 A. I knew because we instructed the office to
6 ship it back to us as we were having -- as I recall,
7 we were having some difficulty figuring out where to
8 ship the equipment. So we brought it back to our
9 office.

10 Q. What was the difficulty figuring out where
11 to ship the equipment?

12 A. I don't recall the details around it.

13 Q. Do you know who within Context made the
14 decision to have the equipment shipped from the
15 practice back to Context?

16 A. I don't recall.

17 Q. Were you involved in any discussions with
18 Mr. Shah about copying any information on the HAN
19 player?

20 A. I was not.

21 Q. Did you learn that that happened?

22 A. The copying of the information I didn't
23 recall happening until I saw the discovery. The
24 copying of the image --

James Demas March 13, 2014

1 Q. The image of the hard drive.

2 A. -- that's what you're referring to, right?

3 Q. We were speaking over each other. So the
4 HAN player arrived back at Context offices, correct?

5 A. Correct.

6 Q. And then were you aware that a video was
7 made of the HAN content, if you will, that
8 essentially the HAN player was hooked up to a
9 Context monitor, the video loop was played, the HAN
10 loop was played, and somebody videoed it?

11 A. Yes, that I was aware of.

12 Q. Were you aware of that at or around the
13 time that that occurred?

14 A. Yes.

15 Q. And how did that come about?

16 A. The actual videotaping?

17 Q. Exactly. Were you involved in any
18 discussions about doing that, you know, is that a
19 good idea, bad idea, anything like that?

20 A. I know Mr. Shah instructed the -- I don't
21 remember who the individual was at the time, to plug
22 in the player. The videotaping of the HAN content
23 that Mr. Berning did, I don't know what the
24 discussions were around that or who made that

James Demas March 13, 2014

1 decision.

2 Q. How do you know that Mr. Shah instructed
3 somebody to plug in the HAN player?

4 A. I believe I saw an e-mail to that effect.

5 Q. Do you understand now that, in addition to
6 making a video of the HAN content, literally like a
7 boot leg-type video of the HAN content, that in
8 addition Context actually made a copy, an image of
9 the entire hard drive of the HAN player?

10 A. I am aware of that.

11 Q. And I take it, though, from a prior answer
12 that you didn't become aware of that, the image of
13 the hard drive, until after this litigation was
14 instituted?

15 A. That's correct. Or I didn't recall.

16 Q. I don't want you to discuss anything that
17 you've discussed with counsel, but after you became
18 aware of it in the context of the litigation, did
19 you have any discussions with anybody at Context
20 about it, the "it" being the imaging of the hard
21 drive?

22 A. Not outside of the discussions of the
23 lawsuit.

24 Q. And I do want to explore those discussions.

James Demas March 13, 2014

1 I just want to make sure that counsel was not
2 involved in those discussions.

3 A. There were a couple discussions that
4 counsel was involved in.

5 Q. Tell me about those discussions.

6 A. Basically just asked Mike Williams --
7 you're familiar with the name Mike Williams?

8 Q. I am.

9 A. After I learned that he imaged it, what he
10 did and where it resides, and that's consistent with
11 what is in the interrogatory responses. That was
12 the extent of my discussion outside of having
13 discussions with counsel.

14 Q. So did Mr. Williams tell you that he had
15 taken a thumb drive, a flash drive that had a
16 program on it called Image For Linux on the thumb
17 drive and put it into the HAN player and made an
18 image of the entire hard drive?

19 A. He didn't tell me the details, he didn't go
20 into as much detail as you are or as in the
21 interrogatories. Basically he told me that he
22 imaged it and then put it on a backup server. I was
23 more concerned with where it was so we could produce
24 it for the forensics.

James Demas March 13, 2014

1 Q. Did you ask him if anyone had instructed
2 him or directed him to make the image?

3 A. That question was asked during a meeting
4 with counsel.

5 MR. COWAN: Let's go off the record.

6 (Whereupon a discussion was had
7 off the record.)

8 BY MR. COWAN:

9 Q. Outside the presence of counsel, did you
10 ever learn whether anyone in Context management had
11 directed Mr. Williams to make an image of the hard
12 drive?

13 A. I think there were some e-mails in
14 discovery, but outside of that, no.

15 Q. Take a look at Exhibit 82, and this is an
16 e-mail -- it's really an e-mail string involving
17 Mr. Berning, Mr. Shah, and Mr. Williams. Is this
18 the e-mail that you're talking about?

19 A. Yes.

20 Q. Have you seen any other e-mails that --
21 other than this one, Exhibit 82, that discuss,
22 reference, or relate to the imaging of the hard
23 drive?

24 A. I don't recall seeing any other e-mails.

James Demas March 13, 2014

1 Q. What were you able to determine, if
2 anything, about -- let me strike that.

3 Did you talk to Mr. Williams about what, if
4 anything, he had done with the hard drive image
5 since the time that he made the copy?

6 A. I did.

7 Q. And what did he say?

8 A. He said he did nothing with it.

9 Q. Do you know if anyone else at Context
10 accessed, viewed, looked at the image of the hard
11 drive at any time?

12 A. I don't know.

13 Q. Outside the presence of counsel, did you
14 have any discussions with Mr. Shah about this hard
15 drive image?

16 A. The only discussions we had were about the
17 forensics exam and the logistics around it.

18 Q. But you never -- strike that.

19 You know now that Mr. Shah was aware that
20 the image was being made back in time when it was
21 done?

22 A. Yes.

23 Q. Did you ever say to Mr. Shah anything to
24 the effect of, you know, that really was not

James Demas March 13, 2014

1 something we should do?

2 A. Well, we discussed it --

3 Q. Outside the presence of counsel.

4 A. No.

5 Q. Do you recall having some communications
6 with what I'll call technicians, firms that Context
7 might engage to install and de-install equipment
8 relative to the issue of de-installing HAN
9 equipment?

10 A. Yes.

11 Q. And we've got some e-mails. I'll put one
12 or two in front of you in a minute, but generally
13 what do you recall about those communications and
14 discussions?

15 A. It was the firm Sarcom who, from my
16 understanding, basically was a service provider for
17 both Healthy Advice and Contextmedia, and they at
18 one point decided they were not going to be involved
19 in any work orders that involved removing the HAN
20 equipment and putting up the Contextmedia equipment.

21 Q. Did they explain to you what their issues
22 were or why they didn't want to do that?

23 A. No. The only thing that I recall from
24 phone conversations was that it was a legal issue on

James Demas March 13, 2014

1 their part or a legal matter.

2 (Plaintiff's Exhibit 146 was
3 marked as requested.)

4 BY MR. COWAN:

5 Q. I don't think I'm going to ask you any
6 questions perhaps substantively about this document,
7 but does this appear to be an e-mail string
8 February 9, 2011 relative to the Sarcom de-install
9 issues?

10 A. Yes.

11 (Plaintiff's Exhibit 147 was
12 marked as requested.)

13 BY MR. COWAN:

14 Q. 147 is an e-mail from Ms. Velazquez to you
15 dated March 2, 2011, and the subject is "Switch
16 package HAN report." She says "Jim, here's the
17 report you asked for," and It looks like it
18 identifies what appear to be HAN practices that had
19 been switched as of March 2, 2011; is that correct?

20 A. That's what it appears to be.

21 Q. Do you recall why you had asked for this
22 report?

23 A. I don't recall why I would have asked for
24 it.

James Demas March 13, 2014

1 Q. Take a look in the book at Exhibit 84.

2 This is an e-mail from you to Mr. Shah and

3 Ms. Agarwal dated December 20, 2010, and the subject

4 is "Sales claims." In your e-mail to Mr. Shah and

5 Ms. Agarwal you said that you heard Matt Garms --

6 Garms at this time was sort of a new member outreach

7 guy?

8 A. He was. At this time he was brand new.

9 Q. It says "I heard Matt Garms on the phone

10 telling an office that we have an agreement with

11 Healthy Advice whereby we remove their screens and

12 ship them back to Healthy Advice. The messaging is

13 false and misleading."

14 You agree that that message was indeed

15 false and misleading?

16 A. I do.

17 Q. Then you say "We probably should make it

18 clear to him and the Acquirent sales team that, upon

19 the office request, we'll remove the HA system and

20 ship it back."

21 Did you have any direct discussions with

22 Mr. Garms after this instance about that subject?

23 A. I don't recall if I had a direct

24 conversation with him.

James Demas March 13, 2014

1 Q. Do you know -- as you sit here today, do
2 you know whether either Mr. Shah or Ms. Agarwal did?

3 A. I don't.

4 Q. Did you have any direct contact or
5 communications with Acquirent, anybody at Acquirent
6 about the issue that's referenced in Exhibit 84?

7 A. I don't recall a conversation with them.

8 Q. And same question. Do you know, do you
9 have firsthand knowledge whether or not Mr. Shah or
10 Ms. Agarwal did?

11 A. I don't recall.

12 (Plaintiff's Exhibit 148 was
13 marked as requested.)

14 BY MR. COWAN:

15 Q. Exhibit 148 is an e-mail from you to
16 Mr. Shah dated March 4, 2011, and the subject is
17 "HAN shipment." Just take a minute and read this to
18 yourself. My question is going to simply be do you
19 have a recollection of what the issue was that's
20 referenced in here?

21 (Witness viewing document.)

22 BY THE WITNESS:

23 A. No, I don't have a recollection of this.

24 Q. For the purpose of the rest of the

James Demas March 13, 2014

1 deposition, I'm going to sort of kind of define a
2 time period that my questions are going to relate
3 to, and it's essentially December 2010 through March
4 of 2013. And the reason I've got that is sometime
5 after March of 2013 it appears as if PatientPoint
6 and Context reached an understanding relative to how
7 the switch-outs would be handled thereafter. So
8 unless I tell you otherwise, my questions now are
9 going to focus on this time period.

10 During this time period, were there a
11 number of occasions when Context removed equipment,
12 whether it's HAN's or otherwise, and mistakes were
13 made involving the equipment, the equipment was sent
14 to the wrong company, FedEx lost or damaged the
15 equipment, anything of that nature?

16 A. There were some.

17 Q. And isn't that sort of an inherent problem
18 associated with a competitor taking charge of the
19 removal of another company's equipment?

20 A. I don't know if that's an inherent problem.
21 Shipping problems happen even when we ship our own
22 equipment back from clinics.

23 Q. Have you ever had a situation where Context
24 shipped some of its own equipment to another

James Demas March 13, 2014

1 competitor in error?

2 A. Our own equipment to another competitor?

3 Q. Yeah.

4 A. I don't recall that happening.

5 Q. Would you be irritated, would you be angry
6 if one of your competitors, one of Context's
7 competitors removed Context equipment and shipped it
8 to another competitor?

9 A. I'd be angry if we didn't get our equipment
10 back.

11 Q. But just the mere fact that it was done and
12 it ended up in a competitor's office, that wouldn't
13 bother you?

14 MR. O'BRIEN: Asked and answered.

15 You can answer it again.

16 MR. COWAN: That's fair. That was asked and
17 answered. You don't need to answer it.

18 (Plaintiff's Exhibit 149 was
19 marked as requested.)

20 BY MR. COWAN:

21 Q. Take a minute and just review 149 to
22 yourself. I'll probably ask you about the
23 Ms. Velazquez e-mail to you and yours to her.

24 (Witness viewing document.)

James Demas March 13, 2014

1 BY MR. COWAN:

2 Q. Ms. Velazquez's e-mail to you of April 27,
3 2011 describes at least a situation, if not
4 situations, where Healthy Advice apparently became
5 aware of an attempted switch of a practice to
6 Context and was able to persuade the client not to
7 switch; is that fair?

8 A. Yes.

9 Q. In terms of Ms. Velazquez and your
10 discussions, was there a desire on the part of
11 Context to try to make sure that the equipment was
12 removed, the de-install process was done quickly
13 enough so that HAN would not receive notice from a
14 member practice with sufficient time to try to
15 counteract the switch?

16 A. My understanding is we're trying to make it
17 as easy as possible for the office by boxing up and
18 taping and having the equipment ready to ship and
19 get our equipment installed. I don't know what
20 Ms. Velazquez's intentions were.

21 Q. But did you understand that there were at
22 least concerns expressed within Context about the
23 need for speed in terms of de-installs so that the
24 HAN equipment was essentially down and Context

James Demas March 13, 2014

1 equipment up quickly to avoid giving HAN the
2 opportunity to try to counteract the switch?

3 A. I view it as us wanting to get the service
4 up and have the member office satisfied with our
5 service as quickly as possible and not necessarily
6 to box out our competitor.

7 Q. well, in paragraph 2 she's talking about --
8 it appears to be dealing with the brochure racks; is
9 that right?

10 A. Yes.

11 Q. And she says a couple sentences in
12 "Basically by the time the install happens the
13 brochure holder should be on site so we can take out
14 HAN's and quickly replace it with ours on the same
15 day our TV is going up. This would avoid any holes
16 left on the wall for any period of time and the site
17 being upset because of an ugly wall - - - which
18 leaves the door open for a call from HAN."

19 what did you understand to be the concern
20 on Context's part, at least Ms. Velazquez's part,
21 about leaving the door open for a call from HAN?

22 A. I believe that she wants to make the member
23 as happy as possible and avoid a competitor coming
24 back in and getting their system up. This is all

James Demas March 13, 2014

1 about, in my opinion, her wanting the member not to
2 have to deal with holes in the wall and give them
3 any reason to remove our service.

4 Q. Were you aware of any internal discussions
5 in Context about -- where the issue was discussed
6 about trying to avoid a situation where a HAN
7 practice communicated with HAN about a potential
8 switch to Context?

9 A. A HAN practice communicated --

10 Q. With HAN.

11 A. -- with HAN about a switch?

12 Q. Right. Yeah.

13 A. To try to avoid that?

14 Q. Where Context wanted to try to do
15 everything they could to avoid a situation where a
16 HAN practice would actually alert HAN or contact HAN
17 and say, you know, we're thinking of switching.

18 A. My recollection around early conversations
19 about that when we initially started doing
20 switch-outs we encouraged the office to call HAN.
21 My recollection from the first five or ten or so
22 that we did was that HAN was calling the offices --
23 and I believe there's some e-mails -- and
24 essentially yelling at office managers, being rude

James Demas March 13, 2014

1 to office managers, and we basically thought that
2 was just something that we didn't want to have
3 people who wanted our service to deal with. So that
4 was the only -- my only recollection of those types
5 of conversations.

6 Q. You don't recall any conversation within
7 context where there was any concern or any
8 discussion within context about wanting -- being
9 concerned that HAN might try to save the account if
10 they were notified of a potential switch?

11 A. We had conversations like that. I don't
12 recall specifics of them.

13 Q. Tell me what you can recall generally.

14 A. Much like we would if we were notified, we
15 would have -- we would want to fight to save our
16 office, and I suspect that HAN would want to do the
17 same and AccentHealth would want to do the same.
18 Those were general conversations.

19 Q. And would it be your expectation that
20 context salespeople, whether it's MSEs or MOEs, if
21 they were alerted by a context practice that the
22 practice was thinking of switching to a competitor,
23 would it be your expectation that whoever received
24 that call, the appropriate person would do whatever

James Demas March 13, 2014

1 they could to try to persuade the Context practice
2 to stay with Context?

3 A. I think -- I'm not sure "whatever they
4 could" means, but yes, they would work hard to save
5 the member office.

6 Q. And do you know if that ever happened? And
7 by that I mean where Context was alerted that a
8 Context practice was thinking of doing a switch and
9 Context was able to save the practice from
10 switching?

11 A. Sure, we've had incidences of that.
12 (Plaintiff's Exhibit 150 was
13 marked as requested.)

14 BY MR. COWAN:

15 Q. Mr. Demas, let me explain 150. It's a
16 multi-page document. What I did is I took several
17 e-mails and tried to put them in chronological order
18 that I think at least appear to me to be all dealing
19 with the same issue, that issue relating to either
20 some damaged or missing HAN equipment.

21 A. Okay.

22 Q. If you could just look at the second-to-
23 last page, which should be Context production 44350.

24 MR. O'BRIEN: You can look at whatever you

James Demas March 13, 2014

1 want.

2 BY MR. COWAN:

3 Q. That's a good instruction. Why don't you
4 review the entire document and familiarize yourself
5 with it and see if my description of it is accurate.

6 (Witness viewing document.)

7 BY THE WITNESS:

8 A. It's reverse chronological order?

9 Q. Exactly, yeah.

10 A. Okay.

11 Q. Well, I'm not sure. It starts August 4 and
12 goes to August 15. So I don't know if that's
13 reverse or chronological, but whatever.

14 A. I was reading it from the back. Sorry.

15 Q. Okay.

16 (Witness viewing document.)

17 BY MR. COWAN:

18 Q. So does this appear to be sort of a string
19 of different e-mails that relate to an issue
20 involving some missing HAN equipment?

21 A. Yes.

22 Q. And the second-to-last page, so this would
23 be Context Bates No. 44350 down at the bottom.

24 A. Yes.

James Demas March 13, 2014

1 Q. There's an e-mail from Chad Patterson. Is
2 he a logistics guy?

3 A. Member services executive.

4 Q. To you August 11, 2011. He says "Jim, we
5 did an HA" -- Healthy Advice -- "switch-out last
6 week in Georgia." I'm assuming "GA" is Georgia.
7 "Our site contact called me and said Healthy Advice
8 reached out to her and told her that the TV was
9 damaged that they received and that some equipment
10 was missing." Do you see that?

11 A. Yes.

12 Q. Then he goes on to sort of describe what
13 he's learned from the tech, and at the end he says
14 "I was going to have the site contact call Healthy
15 Advice back and tell them that everything was fine
16 when they packaged it up and when FedEx picked it
17 up. So Healthy Advice needs to file a claim with
18 FedEx to cover the damages, that the site is not
19 responsible once FedEx has the equipment." Do you
20 see that?

21 A. Yes.

22 Q. So as I understand it, Context goes and
23 removes equipment -- let me strike that.

24 You're aware that Context lawyers got

James Demas March 13, 2014

1 involved as soon as they learned early in 2011 about
2 the switch-out process and wrote some letters to
3 Context about that?

4 MR. O'BRIEN: Object to the form.

5 You can answer.

6 MR. COWAN: Let me rephrase it. I'm not sure
7 what was objectionable.

8 BY MR. COWAN:

9 Q. Are you aware that Healthy Advice's lawyers
10 got involved early in 2011 and there was some letter
11 writing between counsel for Context and Healthy
12 Advice relative to Context switching out Healthy
13 Advice equipment?

14 MR. O'BRIEN: You can answer.

15 BY THE WITNESS:

16 A. Yes.

17 Q. And were you aware that Healthy Advice had
18 through counsel communicated to Context through
19 counsel that no one other than Healthy Advice was
20 permitted or authorized to touch or handle its
21 equipment?

22 A. Yes.

23 Q. So going back to -- and after that time
24 Context continued its practice of removing Healthy

James Demas March 13, 2014

1 Advice equipment and returning it to Healthy Advice?

2 A. Yes.

3 Q. Or at least trying to return it to Healthy
4 Advice?

5 A. Yes.

6 Q. And so this situation that's being
7 referenced by Mr. Patterson was a situation where
8 Context removed some Healthy Advice equipment and
9 the equipment was shipped back, the TV was damaged,
10 at least according to the information provided to
11 Context, and some equipment was missing, and
12 Context's response was to have the practice call
13 Healthy Advice and tell them it was essentially
14 their problem, they needed to file a claim with
15 FedEx?

16 A. That was Chad Patterson's recommendation,
17 not Context's response.

18 Q. How was this resolved, this issue resolved?

19 A. I don't recall the specifics of this issue.

20 (Plaintiff's Exhibit 151 was
21 marked as requested.)

22 BY MR. COWAN:

23 Q. Take a minute and look at 151, Exhibit 151.

24 It's an e-mail from Mr. Coppola to you dated

James Demas March 13, 2014

1 October 18, 2011.

2 (Witness viewing document.)

3 BY MR. COWAN:

4 Q. Do you have any recollection of this
5 particular issue?

6 A. I don't.

7 Q. Do you recall around this time, October of
8 2011, that J3 was asking some questions of Context
9 about Context switch-outs of HAN equipment?

10 A. I do.

11 Q. Tell me what you recall about that.

12 A. I recall Mr. Shah sharing some information
13 with us, and I believe it was initiated because J3
14 had heard from somebody at Healthy Advice that
15 Contextmedia was taking down equipment and
16 essentially doing things that they weren't supposed
17 to be doing.

18 Q. Was anybody at Context, to your knowledge,
19 concerned about the questions being posed by J3?

20 A. Concerned in what way?

21 Q. Just worried that this was an issue that
22 was being raised by an important agency.

23 A. Certainly. We wanted to address it, and we
24 did.

James Demas March 13, 2014

1 Q. In this e-mail what I wanted to kind of
2 question you about is -- it kind of starts on the
3 first page. You're asking I think Matt Coppola "why
4 do notes for 6112 mention HAN equipment?" And he
5 says "Jim, this was a HAN switch-out. The tech
6 wasn't able to fit everything in the boxes to be
7 sent back to CM. So he took the Delta with him and
8 then Matt sent him a label. We wanted
9 everything" -- he capitalized "everything" -- "to
10 come back here first so we could guarantee what is
11 what. Matt says it should arrive back here
12 tomorrow."

13 You write back "Travis, what is a Delta?
14 Are you saying that we are bringing HAN equipment to
15 our office?"

16 This is his response. "Jim, because we
17 have extra equipment that is ours plus HA
18 equipment" -- Healthy Advice equipment -- "I want to
19 insure that we receive our equipment and it's not
20 sent to HA. I have everything picked up today to be
21 delivered here and will repackage the HA equipment
22 and send to Ohio."

23 Were you aware that Healthy Advice
24 equipment as late as October of 2011 was being sent

James Demas March 13, 2014

1 to Context?

2 A. The direction that -- so the answer is no,
3 aside from this e-mail.

4 Q. Got it.

5 And so did you understand this to be sort
6 of an isolated instance, or was there a practice at
7 the time of actually having HAN equipment returned
8 to Context and then packaged up and sent to HAN?

9 A. No, quite the contrary. I didn't want any
10 HAN equipment coming back to Contextmedia. The
11 equipment was to be boxed up and sent directly to
12 HAN to avoid, one, too many people handling the
13 equipment, and then, two, the optics of us touching
14 HAN equipment and bringing them on to our site. We
15 just didn't want to do that.

16 Q. But after you received this e-mail here,
17 did you come to learn -- what I'm trying to figure
18 out is is what's being described here a single sort
19 of isolated instance, or did you come to learn there
20 was more of a widespread practice of the equipment
21 coming back?

22 A. No. This would be isolated. This would be
23 an isolated incident.

24 Q. In terms of your involvement in these

James Demas March 13, 2014

1 issues dealing with HAN equipment issues, for lack
2 of a better term, why was it that you were involved
3 in those discussions and issues as the CFO?

4 A. Most of the time during this period the
5 logistics department reported directly to me, and
6 for some period of time so did the network
7 operations department.

8 Q. Okay.

9 Did you have -- during this time did you
10 have what you considered to be some operational
11 duties and responsibilities?

12 A. Yes.

13 Q. Anything in addition to aspects dealing
14 with logistics in terms of operational duties and
15 responsibilities?

16 A. Member services at one point reported in to
17 me.

18 Q. At what period of time did member services
19 report in to you?

20 A. Between 2010 up until early 2012. Forgive
21 me if my back-end dates might be a little bit off,
22 though.

23 (Plaintiff's Exhibit 152 was
24 marked as requested.)

James Demas March 13, 2014

1 BY MR. COWAN:

2 Q. Exhibit 152 is a series of e-mails that I
3 put together that I have put in chronological order
4 that appear to me to be relating to -- well, that's
5 not right. Why don't we just go through each one at
6 a time.

7 The first e-mail is an e-mail from you to
8 Mr. Coppola October 17, 2011. Just take a minute
9 and look at that. I think all I'm going to ask you
10 about on this is is the request that you're making
11 of Mr. Coppola related to the J3 inquiry?

12 A. It is.

13 Q. And the second page is your e-mail to
14 Ms. Velazquez and Mr. Coppola, the subject is "HAN
15 info," dated October 18, 2011. Same question. Is
16 this e-mail related to the J3 inquiry?

17 A. Yes.

18 Q. And then the next one is an e-mail from you
19 to Mr. Kemp October 18, 2011. It just says "Did we
20 go to 6110 just to box HAN equipment?" Do you have
21 any recollection of what that's about? I don't want
22 you to necessarily tie it to anything else here.

23 A. I don't.

24 Q. And then the last page is an e-mail from

James Demas March 13, 2014

1 Ms. Velazquez to you. The subject is "Elaina," but
2 take a minute and review it to yourself. I'm just
3 trying to figure out what the issue was here, if
4 this relates to the J3 inquiry or something
5 different.

6 (Witness viewing document.)

7 BY THE WITNESS:

8 A. It appears that we're trying to track down
9 a form.

10 MR. COWAN: Can we take a couple minutes. I
11 don't have a considerable amount more, maybe half an
12 hour or less. I'd like to talk to Greg because I
13 actually may be able to eliminate some stuff.

14 MR. O'BRIEN: Okay. Great.

15 (A short break was had.)

16 (Plaintiff's Exhibit 153 was
17 marked as requested.)

18 BY MR. COWAN:

19 Q. 153 appears to be an e-mail from you to
20 everyone dated October 23, 2012 with a copy of the
21 Context noncompetition agreement?

22 A. Yes.

23 Q. Is this, to the best of your knowledge, the
24 agreement that Context has its employees sign?

James Demas March 13, 2014

1 A. This appears to be the most up to date.

2 Q. My only question is on -- it doesn't have
3 page numbers on it, but on 44578, so the second page
4 of the noncompete agreement, there's a provision
5 that defines proprietary information; do you see
6 that?

7 A. F, yes.

8 Q. F, yeah. Is that -- the information that's
9 listed there, is that the information or at least
10 the type of information that Context considers to be
11 proprietary to Context?

12 A. Yes. Yes.

13 (Plaintiff's Exhibit 154 was
14 marked as requested.)

15 BY MR. COWAN:

16 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1

This image consists of a series of horizontal black bars of varying lengths, arranged in a vertical sequence. The bars are positioned at irregular intervals and some are indented from the left edge, creating a rhythmic, abstract pattern. The bars vary in length, with some being very short and others extending across most of the width of the image. The overall effect is a minimalist, graphic composition that suggests a series of data points or a stylized text layout.

James Demas March 13, 2014

1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Merrill Corporation - Chicago

(312) 386-2000

www.merrillcorp.com/law

1

[illegible]

1

[illegible]

James Demas March 13, 2014

1

█

█

█

█

█

█

█

█

█

█

█

█

█

15

16

17

18

19

20

21

22

23

24

(Whereupon, at 11:17 a.m., the
signature of the witness having
been reserved, the witness being
present and consenting thereto,
the taking of the instant
deposition ceased.)

James Demas March 13, 2014

1 STATE OF ILLINOIS)
2 COUNTY OF C O O K) SS:
3

4 The within and foregoing deposition of the
5 aforementioned witness was taken before Tina M.
6 Alfaro, C.S.R. and Notary Public, at the place,
7 date, and time aforementioned.

8 There were present during the taking of the
9 deposition the previously named counsel.

10 The said witness was first duly sworn and
11 was then examined upon oral interrogatories; the
12 questions and answers were taken down in shorthand
13 by the undersigned, acting as stenographer and
14 Notary Public; and the within and foregoing is a
15 true, accurate, and complete record of all the
16 questions asked of and answers made by the
17 aforementioned witness at the time and place
18 hereinabove referred to.

19 The signature of the witness was not
20 waived, and the deposition was submitted, pursuant
21 to Rules 30(e) and 32(d) of the Rules of Civil
22 Procedure for the United States District Court, to
23 the deponent per copy of the attached letter.
24

James Demas March 13, 2014

1 The undersigned is not interested in the
2 within case, nor of kin our counsel to any of the
3 parties.

4 Witness my official signature and seal as
5 Notary Public, in and for Cook County, Illinois on
6 this ____ day of _____, A.D., 2014.

7
8
9
10 _____
11 Tina M. Alfaro, CSR, CRR, CLR
12 C.S.R. No. 084-004220
13 311 South Wacker Drive
14 Suite 300
15 Chicago, Illinois 60606
16 (312) 386-2000
17
18
19
20
21
22
23
24

James Demas March 13, 2014

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE SOUTHERN DISTRICT OF ILLINOIS
 3 WESTERN DIVISION

4 HEALTHY ADVICE NETWORKS, LLC.)
 5)
 6 Plaintiff,)
 7)
 8 vs.) Case No.
 9) 1:12-cv-00610
 10 CONTEXTMEDIA, INC.,)
 11)
 12 Defendant.)

13 I, JAMES DEMAS, being first duly sworn, on
 14 oath say that I am the deponent in the aforesaid
 15 deposition taken on February 13, 2014; that I have
 16 read the foregoing transcript of my deposition
 17 consisting of pages 1 through 73 inclusive, and
 18 affix my signature to same.

19 JAMES DEMAS

20 SUBSCRIBED AND SWORN TO
 21 before me this ____ day
 22 of _____, 2014.

23 _____
 24 NOTARY PUBLIC

James Demas March 13, 2014

March 17, 2014

Sidley Austin, LLP
Richard O'Brien, Esq.
One South Dearborn Street
Chicago, Illinois 60603

Re: HEALTHY ADVICE v. CONTEXTMEDIA
1:12-cv-00610

Dep: JAMES DEMAS

Dear Mr. O'Brien:

Enclosed is your copy of the deposition transcript along with the original signature page and errata sheet.

Pursuant to the rules of court in this matter, please have the deponent read the transcript and sign the signature page before a notary public.

If any corrections/changes are to be made, please TYPE or PRINT them on the attached errata sheet, giving the page and line number, desired correction/change, and reason.

Please arrange for accomplishment of same and transmittal of the signature page and errata sheet back to our office within 30 days from the date of this letter.

Upon failure to comply, we shall forward an appropriate affidavit of noncompliance to all counsel of record.

Sincerely Yours,

Merrill Legal Solutions

cc: Grant Cowan

(TMA - 1401-219296)

James Demas March 13, 2014

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

ERRATA SHEET

CASE NAME: HEALTHY ADVICE v. CONTEXTMEDIA

CASE NUMBER: 1:12-cv-00610

WITNESS: JAMES DEMAS

PAGE LINE

_____ CHANGE: _____

_____ REASON: _____

_____ CHANGE: _____

_____ REASON: _____

_____ CHANGE: _____

_____ REASON: _____

_____ CHANGE: _____

_____ REASON: _____

_____ CHANGE: _____

_____ REASON: _____

_____ CHANGE: _____

_____ REASON: _____

_____ CHANGE: _____

_____ REASON: _____

_____ CHANGE: _____

_____ REASON: _____

Signed: _____ Date: _____

REPORTER: Tina M. Alfaro